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ABSTRACT

This brochure presents constitutional principles and guidelines to enable schools and religious groups to work together. It states that public schools must be neutral concerning religion in all of their activities; students have the right to engage in, or decline to engage in, religious activities so long as they do not interfere with the rights of others; and cooperative programs between religious institutions and the public schools are permissible only if participation is not limited to religious groups and a student's grades or class rank are not affected by participation or nonparticipation; and student participation in such programs is not conditioned on religious affiliation. The brochure states that schools may call on religious leaders during crises, that religious leaders are not given routine access to students, that public schools may cooperate with mentoring projects run by religious institutions, and that religious institutions may serve as shelters for students seeking safety. Public schools may arrange to use the facilities of religious institutions provided that the schools have a secular educational purpose for seeking to use the facilities, the facilities are not used for proselytizing students, and such use does not necessitate an ongoing administrative entanglement between the school district and the religious institution. (RJM)

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Public Schools

Religious Communities

A First Amendment Guide

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"Public Schools and Religious Communities:
A First Amendment Guide" is published jointly by:

American Jewish Congress

Christian Legal Society

First Amendment Center

The guide has been co-signed by the
following organizations:

American Association of School Administrators

Association for Supervision and
Curriculum Development

Baptist Joint Committee on Public Affairs

Council on Islamic Education

National Association of Evangelicals

National Association of Elementary
School Principals

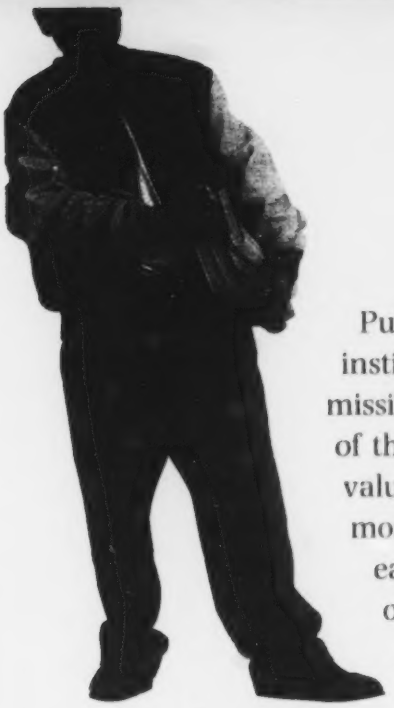
National Association of Secondary
School Principals

National Council of Churches of Christ
in the U.S.A.

National PTA

National School Boards Association

United States Catholic Conference



Public schools and religious institutions have different missions, but they share many of the same civic and moral values. Both are located in most neighborhoods, and each is committed within its own role to the well-being of children. By working together in ways that are permissible under the First Amendment, as interpreted by the U.S. Supreme Court, schools and religious communities can do much to enhance the mission of public education.

Before any school district enters into a cooperative arrangement with any community organization, including religious groups, school officials must be confident that the group provides a safe and secure place for children. In addition, special constitutional considerations apply to cooperative arrangements with religious institutions. Under the First Amendment, public schools must remain neutral among religions and between religion and non-religion. By contrast, religious institutions exist to propagate religious faith and encourage religious practices.

Clearly, then, public schools must be careful when they work with religious institutions, because in important ways these institutions have differing commitments. Although some of the issues discussed here have not been authoritatively decided by the courts, we believe that the constitutional principles and guidelines outlined in this document will enable schools and religious groups to work together for the common good.

These guidelines focus on arrangements between public schools and religious institutions because of the special constitutional implications of those relationships. This focus is not meant to suggest that schools should only seek out religious institutions or that such institutions are preferred providers of assistance to public-school children. We urge schools to seek out a wide range of community organizations, religious and non-religious, without regard to their views on religious issues.

I. General Principles for Cooperative Arrangements

In these guidelines, a "cooperative arrangement" is defined as a shared participation in specific programs and activities in accordance with a written agreement. Before entering into a cooperative arrangement, public schools and religious communities should understand and accept the following principles:

1. Under the First Amendment, public schools must be neutral concerning religion in all of their activities. School officials must take the necessary steps to ensure that any cooperative activities that take place are wholly secular. Persons invited to address students during the school day shall be advised of this requirement and must agree to abide by it before being allowed access to students.

2. Students have the right to engage in, or decline to engage in, religious activities at their own initiative, so long as they do not interfere with the rights of others. School districts are urged to adopt policies that reflect recent consensus

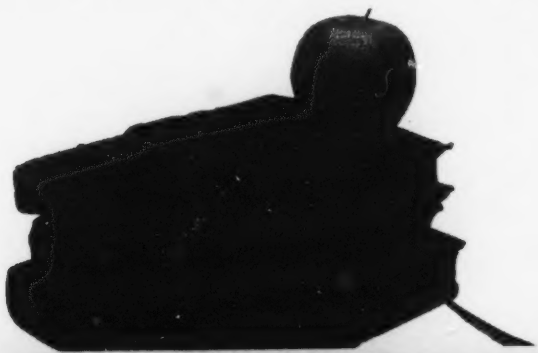
statements on current law concerning religion in public schools. "Religion in the Public Schools: A Joint Statement of Current Law," the U.S. Department of Education's guidelines on "Religious Expression in Public Schools," and other consensus guidelines may be obtained by writing to the publishers of this brochure.

3. Cooperative programs between religious institutions and the public schools are permissible only if:

   - Participation in programs is not limited to religious groups. That is, schools must be open to participation by all responsible community groups. Qualifications should not be established which have the practical effect of including only religious groups. Eligibility shall be stated in writing.

   - A student's grades, class ranking or participation in any school program will not be affected by his or her willingness to participate or not participate in a cooperative program with a religious institution.

   - Student participation in any cooperative program may not be conditioned on membership in any religious group, acceptance or rejection of any religious belief, or participation (or refusal to participate) in any religious activity.



II. Crisis Counseling

In times of sudden crisis (e.g., violent or accidental death of students or teachers), schools may call on a wide range of qualified counselors, including religious leaders, to assist school-employed counselors in helping children cope with the crisis at hand. Of course, religious leaders may not be the only grief counselors invited on campus during a crisis. Religious leaders may not otherwise be given routine access to students during the school day. Even when counseling to deal with a sudden crisis, religious leaders should remember that a public school is not a place for proselytizing or other overt religious activity.

To the extent that schools cooperate with adults who are important in a student's life (parents or other relatives, guardians, foster parents, social workers or neighbors) to help the child deal with school work, behavioral problems, or other issues, schools may also cooperate with an adult acknowledged by a student as his or her religious leader. However, a school may not in any way compel or coerce a student to speak to representatives of religious institutions.

III. Mentoring Programs

Public schools may cooperate with mentoring projects run by religious institutions provided that:

- Other community organizations are given an equal opportunity and are subject to the same secular selection criteria to operate such programs in partnership with the schools.

- Referrals are made without regard to a student's religious beliefs or lack of them.

- Participation in the program is not conditioned on mandatory participation, or refusal to participate, in religious programs operated by a religious institution.

- At no time do school officials encourage or discourage student participation in the religious programs of religious institutions.

IV. Shelters

In order to provide for the safety of students travelling to and from schools, the school district may ask local institutions (e.g., businesses, firehouses, religious institutions) to serve as temporary shelters for students who seek to avoid danger or threatening situations. The school shall provide signs indicating that the place is a shelter available for students.

V. School Use of Facilities Owned by Religious Institutions

Public schools may arrange to use the facilities of private landholders, including churches, temples, mosques, or other religious institutions. Of course, all such facilities must meet applicable health and safety codes. But if the arrangement involves the use of sanctuaries, playgrounds, libraries or other facilities owned by religious groups, then the following First Amendment guidelines must be followed:

1. The schools must have a secular educational purpose for seeking to use the facilities, such as after-school recreation, extended daycare, homework study hall, etc.

2. Where schools lease space from religious institutions for use as regular public-school classrooms, the leased space is in effect a public-school facility. Religious symbols or messages may not be displayed in the leased areas.

3. Cooperative programs using the facilities of religious institutions must not afford an actual opportunity for proselytizing by clergy, school employees, or adult volunteers of any school children during the school-affiliated program. (Of course, the law is not violated if a cooperative program's use of a religious facility coincidentally results in a student gaining an interest in attending worship services there. But the law prohibits clergy from leading devotions as part of the school program.)

4. As stated above, religious symbols and messages may not be displayed in space leased from religious institutions for use as public-school classrooms. The rules are somewhat different for cooperative programs. A room bedecked with scriptural injunctions about repentance and salvation would not be appropriate for cooperative programs; a room with religious symbols or icons might well be.

5. School officials may neither select nor reject the use of a private religious facility based on the popularity or unpopularity of its religious teachings. Religion-neutral criteria should be employed, e.g., proximity to the schools in question; suitability of the facility for the intended use; health and safety; comparative expenses (if any); accessibility for parent pickup or busing.

6. The school's arrangement for use of a private religious facility should not involve

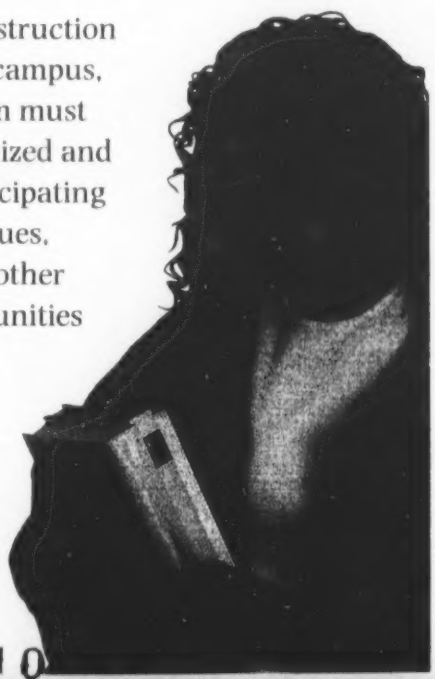
or necessitate an ongoing administrative entanglement between the school district and the religious institution, in which one party ends up exerting influence over the content, scheduling or staffing of the other's activities.

VI. Released-Time Religious Education

Public schools may allow students who have parental permission to leave campus during the school day for religious instruction. (Such released-time programs were ruled constitutional by the U.S. Supreme Court almost 50 years ago.) In released-time religious education, parents must give permission in advance for their child to be transported off campus during the school day to a place designated by participating religious institutions. The parent chooses which faith his or her child is to learn.

If a public school chooses to allow released time, the following guidelines must be observed:

1. The religious instruction must occur off campus, and the program must be wholly organized and run by the participating churches, mosques, synagogues, or other religious communities and not by the schools. The religious communities should make all arrangements for facilities,



transportation, instruction, insurance, parent information and permission, etc. The programs should not involve the expenditure of public funds.

2. In their words and actions, teachers and administrators may not encourage or discourage the participation of students or parents in released-time programs. Teachers should arrange their lesson plans so that students who participate in released-time religious education are not left at a disadvantage by missing instruction, tests, or class parties during that time. Neither should non-participating students be deprived of meaningful classroom activity. Schools must create neither incentives nor penalties for students to participate or not participate in released-time programs.

3. Parental permission must be a prerequisite for participation in any released-time program of religious instruction. To avoid use of government funds or personnel for religious indoctrination, only the religious community should print and only volunteers should distribute any information and parental permission forms to students, as well as take attendance.

4. Participating religious organizations should inform schools of the weekly attendance by each released student.

5. Schools may require liability insurance and other reasonable regulations relating to student health, education and safety, provided such regulations apply neutrally to all participating religious communities.

American Jewish Congress

The American Jewish Congress is an organization dedicated to protecting civil and constitutional rights. It has a special interest in protecting the separation of church and state and religious liberty.

AJCongress chaired the effort to draft and promulgate "Religion and the Public Schools: A Joint Statement of Current Law." In that effort it was joined by numerous other groups, including the Christian Legal Society. These guidelines on cooperative arrangements between religious communities and public schools grew out of a joint effort by CLS and AJCongress to provide guidance for the Chicago public school system as it sought to initiate a series of cooperative programs.

Christian Legal Society

Christian Legal Society is a national association of 3,500 Christian attorneys, law students, judges, and law professors in every state. CLS's legal information and advocacy arm, the Center for Law and Religious Freedom, has since 1975 defended all faiths from excessive government interference with their free exercise of religion.

CLS is indebted to the American Jewish Congress and the Freedom Forum First Amendment Center for their expertise and trailblazing cooperation in the efforts to find common ground, rather than battlegrounds, for the welfare of future generations.

First Amendment Center

The First Amendment Center at Vanderbilt University is an independent operating program of The Freedom Forum. The center's mission is to foster public understanding of and appreciation for First Amendment rights and values.

Through its Religious Freedom Programs, the Center helps schools and communities throughout the nation address issues concerning religion and values in public schools. The center publishes a number of First Amendment guidelines on religious liberty in schools, including "Finding Common Ground" and "Religious Liberty, Public Education, and the Future of American Democracy," a statement of principles sponsored by 24 educational and religious organizations.

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